United States District Court
Southern District of Texas
FILED

MAY 3 1 2011

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT

Southern **DISTRICT OF** Texas
Galveston Division

NO. ______

11 CV - 242

Romona R. Mayeaux, a/k/a Chief Mayeaux)
Plaintiff,)
)
vs.) **COMPLAINT**
)
Houston Independent School District;)
Hattie Mae White Educational Support Center)
4400 West 18th Street, Houston, Texas 77092-8501)
Dr. Terry B. Grier, Ed.D., HISD-Superintendent of Schools) **TITLE VII-**
Ann Best-Chief Human Resources Officer) **Discrimination**
Josephine Morgan-HISD EEO Supervisor) **Based on Sex (gender),**
Martha D. Salazar-Zamora- HISD Services Director) **Retaliation,**
LTC (Ret) Cornell T. McGhee-JROTC Director) **Intimidation,**
Roger Ibarra-Principal, Fonville Middle School) **Wrongful Termination,**
Dr. San Juanita Garza-Business Manager Fonville Middle) **Demand for Jury Trial**
Jose A. Espinoza-Area Chief)
S. Dallas Dance-Chief School Officer)
R. Moore –HISD Inspector General)

Defendant,

Plaintiff, complaining of the defendant, Houston Independent School District:

JURISDICTION AND VENUE

1. Plaintiff invokes this Court's jurisdiction pursuant to 42 U.S.C. 2000e-5 and 28 U.S.C. Section 1243(4).

2. The unlawful employment practices alleged below were and are being committed within the Division of the UNITED STATES District of the State of Texas.

3. 34 CFR 110.34 - Prohibition against intimidation or retaliation.
110.34 - Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who (a) Attempts to assert a right protected by the Act or these regulations; or (b) Cooperates in any mediation, investigation, hearing, or other part of ED's investigation, conciliation, and enforcement process.

(Authority: 42 U.S.C. 6103)

Retaliation against opposition to discrimination

The Supreme Court ruled that employees are protected from retaliation when they complain about discrimination in the workplace, adopting a broad interpretation of workers' rights under two federal civil rights laws.

Opinion (Gomez-Perez v. Potter)
Opinion (CBOCS West, Inc. v. Humphries) By decisions of 7 to 2 in one case and 6 to 3 in the other, the court found that the two statutes afford protection from retaliation even though Congress did not explicitly say so.

Congress has provided explicit protection against retaliation in two major federal statutes. One is Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race and sex.

PARTIES

4. Plaintiff, Romona R. Mayeaux (a/k/a Chief Mayeaux is a female citizen of the United States and a resident of Brazoria County, Texas, in the District of Texas. She was employed by the defendant at all times relevant to the allegations set forth in this Complaint and is presently terminated as of 17 December, 2010 while Chief Mayeaux was at her military duty, per orders.

5. Defendant is a corporation organized under the laws of the State of Texas and doing business in the State of Texas in the District of Texas, including business at a location in Harris County, Texas.

ADMINISTRATIVE PROCEDURES

6. Plaintiff, Romona R. Mayeaux filed a charge of employment discrimination against the defendant with the Federal Office of the Equal Employment Opportunity Commission ("EEOC"), on **25 October, 2011**. The plaintiff received a "Notice of Right to Sue" concerning Discrimination based on sex
7. (gender) by letter from the Federal Office of the EEOC dated **28 February, 2011**, entitling her to institute a civil action with respect to the **29 May, 2011** charge

1994 (USERRA 38 U.S.C. 4301-4335).

b.) HISD Finance policy and procedure section 305d-Receipting by someone other than the General Clerk.

g) HISD Finance policy and procedure section 317a dictates, "Once the person requesting a fundraiser has completed the front side of the AF 108 fundraiser request form, it "shall" be signed by the Principal. HISD Finance policy section 317a does not exclude verbal approval.

NOTE: September, 2009: Dr. San Juanita Garza-Fonville Middle School Business Manager reminded all fundraiser sponsors via e-mail to follow HISD Finance policy section 317a to "...complete their AF 108 fundraiser request form and then Mr. Ibarra will sign it". Nowhere in HISD Finance fundraiser policy does it dictate that the approval to conduct a fundraiser cannot be verbally. But, policy does dictate that ...if a directive is given and it is not followed, termination can be an ultimate punishment.

Charge of discrimination based on Sex-Female:

I was discriminated against because of my gender, female. I was denied updated training to be effective and efficient in updated fundraiser training on who to submit funds to when the person you submit them in to, Mrs. Marisol Solis (General Clerk), was not available according to HISD Finance policy section 305d-Receipting by someone other than a General Clerk. I was disciplined for an action that occurred from not having the above mentioned training and submitting uncompleted documents that went against HISD policy/procedure. This allegation was fraud.

As of today 29 May, 2011, I am not working in the position for which I was hired, JROTC/LCDC Teacher.

I was terminated from HISD effective 17 December 2010 while on Military active duty for training.

Ann Best, Chief Human Resources Officer, indicated that the recommendation for termination is based on findings by "...your supervisor, Mr. Roger Ibarra, Principal, Fonville Middle School, that your conduct has been unsatisfactory. Specifically, an investigation conducted by the HISD Office of Inspector General and reviewed by your supervisor found that you failed to comply with District finance procedures."

The Inspector General's Report on 5 November, 2010 was fraudulent because it did not include any documentation or information from Ms. Mayeaux. No e-mail, fax, or documentation of any kind was received from the Office of Inspector General that indicated they spoke with Ms. Mayeaux or interviewed her to have all information necessary to make a sound and correct assessment of the charge by Mr. Ibarra.

In August 2009, I was out on military training when Respondent conducted two hours training on Professional Development in relation to updated fundraising techniques on who to turn in your funds to when the person you turn them into, Ms. Solis, is not available.

If I would have been given the updated training as Mr. Ibarra noted, I would not be in the situation that I am in now - terminated from HISD employment.

All other teachers received this training but when another teacher-male-Mr. Bern tried to turn in funds when Ms. Solis was not available, he was told to hold onto them until she returned the next day. But, when I did the same thing, I was investigated by the Inspector General where criminal charges could be assessed.

Mr. Ibarra did not issue me the updated Fundraiser guideline that the other teachers received which explains the new process of who to submit funds to when the person you submit them to is not available. I was not informed about the training until I was disciplined on the fundraiser issues. Mr. Ibarra is holding me accountable for errors that may have been due to lack of training or knowledge of the new and updated fundraiser process and because I am a female. Mr. R. Sells, Mr. H. Luevanos both males, did receive this training. No training was provided to me from 17 August, 2009 to 15 September, 2010.

EXHIBIT 1:

1. A). Mr. Ricky Sells, male teacher, conducted a fundraiser prior to his fundraiser document being signed and approved by Mr. Ibarra. No adverse action was taken against him for not completing the AF 108, per HISD Finance policy section 317a.
B). Mr. Hector Luevanos' AF 108 fundraiser request was not dated by Mr. Ibarra, which may be an indication that it begun before Mr. Ibarra approved it. No adverse action was taken against him for not completing the AF 108, per HISD Finance policy section 317a.
C). Neither of these two male teachers were investigated, disciplined, nor did they have an adverse action taken against them for conducting an unauthorized fundraiser because their AF 108 form was not completed per HISD Finance policy section 317a.
D). Mr. Ricky Sells, male teacher, received a copy of his fundraiser request. Mr. Sells indicates that he is always given a copy of his AF 108 request form or he is allowed to make the copy for himself. Ms. Mayeaux was never given a copy of her fundraiser request form from Principal R. Ibarra to prove that it was completed. I requested the form more than 7 times.

Mr. Ibarra verbally directed me to conduct the fundraiser and came to my class on 2 February, 2010 to verify I was following his directive.

E). Mr. Ricky Sells, male teacher, was allowed to have a fundraiser from 17 November, 2009 to 3 February, 2010. Mrs. Marisol Solis, the financial clerk who is the only person because she was not rendered that same updated fundraiser training that Mr. Ibarra gave to Mr. Sells and Mr. Luevanos.

4. Mr. Sells was not removed from his duties for not following HISD policy to turn in funds when they reach $50.00. He was not investigated by the Office of Professional Standards or the Inspector General's Office for inappropriate money collection/submit funds over $50.00 day, investigated for an unauthorized fundraiser because he began his fundraiser without completing the AF 108 form according to policy.

5. Mr. Sells did not lose his job for not following HISD fundraiser Finance policy 317a. Mr. Sells was not removed from his duties, and was not investigated by the Office of the Inspector General where criminal charges can be assessed.

6. Mr. Sells was not terminated because he performed his duties in an unsatisfactory manor, and did not follow HISD fundraiser policy to not hold $50.00 or more in his possession overnight, and to not complete his AF-108, although Mr. Ibarra signed it nevertheless.

7. Because Mr. Sells is a man, Mr. Ibarra approved a fundraiser on 8 January – 29 February, 2010 without a completed AF 108 request form.

This is the same reason Mr. Ibarra charged Ms. Mayeaux with not signing her AF 108 – form. This was fraud, willful and malicious because her form was completed, as opposed to Mr. Sells Af-108 that was not. Both Mr. Sells and Mr. Ibarra did not follow HISD Finance policy section 317a but neither had an adverse action conducted against them.

8. There were no consequences directed at Mr. Sells for not having a completed AF-108 submitted to the Principal for signature as was to Ms. Mayeaux. Yes, as a male, Mr. Ibarra signed Mr. Sell's incomplete form. No investigation occurred by the Inspector General's office against Mr. Sells nor did he receive any adverse action, teacher duties taken away, reassigned to another location, an investigation conducted by higher ups for his failure to submit a completed AF-108.

9. Ms. Mayeaux never received any training pertaining to whom to turn in funds to when Ms. Solis is not available.

EXHIBIT 2:

2. A). Mr. Driver, male Teacher, was removed from his classroom for allegedly hitting (assaulting) a student and investigated immediately from approx. March 2 –May 28, 2010 and was not removed from the school premises while the investigation was being conducted – as required by HISD policy (per Ms. Debra Martin-ez EEO analyst). The assault was captured and documented per the camera located in the 6th grade hallway, right outside of Mr. Driver's classroom. It was determined that Mr. Driver did hit the student. Mr. Driver was cleared and allowed to continue teaching for the new school year of 2010-2011.

B). Ms. Mayeaux was removed from her classroom and escorted by Police Officer Rideau from her classroom to the main office. She was transferred to another location where she was denied her due process. An investigation was to begin February 5, 2010 according to Mr. Ibarra by the Inspector General Office and the Office of Professional Standards. The investigation did not begin until approx.… 1 August, 2010—7 months later. Justice delayed by HISD and Mr. Ibarra was justice denied. Mr. Drivers' investigation began that same day. Although Mr. Ibarra wrote an incident report form, he cannot and will not provide Ms. Mayeaux with the stamped copy received by the Inspector General's Office.

C). Ms. Mayeaux have requested more than 7 times to receive a copy of the stamped document received from Mr. Ibarra and the Inspector General/Office of Professional Standard when they received a copy of the request to begin the investigation.

EXHIBIT 3:

3 A. Mr. Bern, a male teacher, was given a letter from Mr. Dallas Dance-Chief School Officer regarding reassignment location and reporting hours to be from 7:45am to 3:30pm—consistent with his hours from Fonville Middle School.
B). Mr. Bern was then given (in person) a letter from Mr. Leonard Daley-at the Reassignment Center which stated his new work location and his duty hours as being 7:45am-3:30pm---the same as his duty hours at Fonville Middle School.
C). Mr. Bern was given documentation as to his reporting hours upon reassignment. Ms. Mayeaux was not.

LTC McGhee(JROTC Director) gave Ms. Mayeaux a directive to work 30 minutes of her one hour unpaid lunch break every day. LTC McGhee threatened Ms. Mayeaux by telling her that if she did not follow this directive, her employment will be terminated. Roger Ibarra (Principal) and George Garver (Inspector General Investigator) concurred with this bullying and threat. According to HISD Board Policy DH (LOCAL), employees who do not follow directives given by their Supervisor or Principal could be terminated.

D). Although Ms. Mayeaux's hours and benefits changed 3 times when they stole 30 minutes of her lunch hour by making her work an extra 30 minutes a day---with no compensation; she was only given a letter of transfer 17 February, 2010.
E). Mr. Bern's reporting hours never changed from the time of his reassignment to the present day.
F). Ms. Bern, male, was treated differently from Ms. Mayeaux, female, because Mr. Bern received reporting hour instructions in writing, and Ms. Mayeaux did not.

Ms. Mayeaux was the only JROTC instructor at her work location given this directive to work 30 minutes of her one hour lunch break. This is discrimination based on gender and a violation of Title Seven.

I was not involved with the investigation conducted by the Inspector General's Office, which renders the investigation fraudulent. It does not seem proper to investigate someone and not speak with them for their version of the events.

Retaliation against opposition to discrimination,

The Supreme Court ruled that employees are protected from retaliation when they complain about discrimination in the workplace, adopting a broad interpretation of workers' rights under two federal civil rights laws.

Opinion (Gomez-Perez v. Potter)
Opinion (CBOCS West, Inc. v. Humphries) By decisions of 7 to 2 in one case and 6 to 3 in the other, the court found that the two statutes afford protection from retaliation even though Congress did not explicitly say so.

Congress has provided explicit protection against retaliation in two major federal statutes. One is Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race and sex

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FIRST CAUSE OF ACTION

Discrimination based on Gender
In Violation of TX Lab Code Ann 21.002/ Title VII as ammended

SECOND CAUSE OF ACTION

Retaliation base on the following:
In Violation of 34 CFR 110.34 - Prohibition against intimidation or retaliation. 110.34 - Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who (a) Attempts to assert a right protected by the Act or these regulations; or (b) Cooperates in any mediation, investigation, hearing, or other part of ED's investigation, conciliation, and enforcement process.

(Authority: 42 U.S.C. 6103) Texas STAT 21.055. Retaliation 411.082; 411.083; 21.007; Labor 207.022, 207.023
HISD dictated that because of Ms. Mayeaux's excessive absences, as to the cause of action there she should be terminated, HISD violated The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA 38 U.S.C. 4301-4335) and the American Disability Act. Americans with Disabilities Act of 1990 (ADA), Title VII of the Civil Rights Act of 1964 (Title VII) and when the Family and Medical Leave Act of 1993 (FMLA) also applies.

THIRD CAUSE OF ACTION

Intimidation based on
In Violation of Texas STAT 418.001; Labor 207.022, 207.023; Tx Lab Code Employer 373 et seq; Tx Employer Lab Code 380, 381, 433, 434.

FOURTH CAUSE OF ACTION

Wrongful termination based on
In Violation of TX Lab Code ANN 21.002 TX. Lab Code Employer 392

WHEREFORE, Plaintiff requests judgment against Defendants as is more fully set forth below.

REQUEST FOR RELIEF

1. For general damages according to proof;
2. For special damages according to proof;
3. For punitive damages with respect to each Cause of Action;
4. For costs of suit;
5. For interest at the maximum legal rate on all sums awarded;
6. For any attorneys' fees with respect to the Cause(s) of Action deemed appropriate

   and

7. For such additional and further relief as the court deems just and proper.

Dated: 31 May, 2011 ROMONA R. MAYEAUX

Romona R. Mayeaux
Representative for self
12608 Emerald Springs Dr.
Pearland, Tx. 77584
2813845328

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on each cause of action for which a trial by jury is proper.

Dated: 31 May, 2011

Romona MAYEAUX

Romona R. Mayeaux
Representative for self

Rule 4. Computation of Time

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered or certified mail or by telephonic document transfer, and for purposes of the five-day periods provided for under Rules 748, 749, 749a, 749b, and 749c.

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by orders of July 26, 1960, eff. Jan. 1, 1961; April 24, 1990, eff. Sept. 1, 1990.

Comment—1990

Amended to omit counting Saturdays, Sundays and legal holidays in all periods of less than five days with certain exceptions.

General Commentary—1966

Note on 1961 amendment: "Under our present statutes, only the days designated in Article 4591 are legal holidays within the meaning of Rule 4." Smith v. Harris County—Houston Ship Channel Nav. Dist., 1959, 160 T. 292, 329 S.W.2d 845. Prior to the 1960 amendment of this rule Saturday was not regarded as a legal holiday to be excluded in computing the time periods prescribed by the Rules of Civil Procedure. Riggs v. Bartlett, Civ. App.1956, 286 S.W.2d 699, ref. n. r. e. The exclusion of Saturdays, in addition to Sundays and legal holidays, was motivated by the increasing curtailment of mail deliveries on Saturdays and in recognition of the fact that Saturday is no longer a normal business day as evidenced by the widespread closing of banks, government offices and court-houses, and the majority of business establishments for half the day.

Opinion of Subcommittee on Interpretation of Rules

Defendant's answer

Where the 20th day after service of citation falls upon Sunday [or Saturday; see 1961 amendment], defendant will be required to answer on the Monday immediately following the expiration of the 20 days under Rule 101 and he will not be justified in awaiting the second Monday under Rule 4, because the time between service and answer is a traditional period in Texas procedure and seems to be ... able on a [Saturday or] Sunday or a legal holiday. 5 T.B.J. 15; 8 T.B.J. 6.

Divorce cases

The trial of a divorce case may be had on the 30th [60th, after 1955 amendment to art. 4632] day after the same has been filed not counting the day of filing, thus permitting the trying of such case one day earlier than was permitted under the decisions construing art. 4632 prior to the effective date of the rules. 10 Texas B.J. 109 (1947).

Historical Notes

Source

Federal Rule 6(a), omitting the Federal provision excluding intermediate Sundays or holidays when the period of time is less than seven days and the Federal reference to half-holidays.

Rule 5. Enlargement of Time

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (a) with or without motion or notice, order the period enlarged if application therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (b) upon motion permit the act to be done after the expiration of the specified period where good cause is shown for the failure to act. The court may not enlarge the period for taking any action under the rules relating to new trials except as stated in these rules.

If any document is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, the same, if received by the clerk not more than ten days tardily, shall be filed by the clerk and be deemed filed in time. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by orders of Oct. 12, 1949, eff. March 1, 1950; July 21, 1970, eff. Jan. 1, 1971; Oct. 3, 1972, eff. Feb. 1, 1973; July 22, 1975, eff. Jan. 1, 1976; April 10, 1986, eff. Sept. 1, 1986; April 24, 1990, eff. Sept. 1, 1990.

Comment—1990

To make the last date for mailing under Rule 5 coincide with the last date for filing.

Opinions of Subcommittee on Interpretation of Rules

Plea of privilege hearings

Failure to deliver to plaintiff ... of the ... these circumstances should ordinarily be granted. This would not render nugatory and void Rule 86, as the filing of a controverting plea would still be a prerequisite to the overruling of a proper plea of privilege. 5 Texas B.J. 426 (1942), 8 Texas B.J. 24 (1945). [But see Rule 86 as amended].

Under Rules 1 and 5, a wide discretion is vested in the courts in dealing with questions of enlargement.

Admission of facts and genuineness of documents

Where motion for extension of time for replying to request for admissions of fact is ineffective on account of its wording, a second though more onerous motion could be urged and granted under Rule 169 and subdivision (b) of Rule 5. 5 Texas B.J. 426 (1942), 8 Texas B.J. 25 (1945).

Historical Notes

Source

Federal rule 6(b), with minor textual changes.

Rule 6. Suits Commenced on Sunday

No civil suit shall be commenced nor process issued or served on Sunday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings; provided that citation by publication published on Sunday shall be valid.

Oct. 29, 1940, eff. Sept. 1, 1941. Amended by order of Oct. 3, 1972, eff. Feb. 1, 1973.

Historical Notes

Source

Vernon's Ann.Civ.St. art. 1974, unchanged.

Rule 7. May Appear by Attorney

Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

Oct. 29, 1940, eff. Sept. 1, 1941.

Historical Notes

Source

Vernon's Ann.Civ.St. art. 1993, unchanged.

Rule 8. Attorney in Charge

On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleadings for any party shall be the attorney in charge, unless another attorney is specifically designated therein. Thereafter, until such designation is changed by written notice to the court and all other parties in accordance with Rule 21a, said attorney in charge shall be responsible for the suit as ...